

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0318-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
RENIE VARELA VALENCIA,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20052947

Honorable Frank Dawley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Barton & Storts, P.C.
By Brick P. Storts, III

Tucson
Attorneys for Petitioner

H O W A R D, Presiding Judge.

¶1 Following a jury trial, Renie Varela Valencia was convicted of first-degree burglary and theft by control of property valued at \$25,000 or more. The trial court sentenced him to presumptive, concurrent prison terms of 15.75 years for each conviction. This court affirmed the convictions and sentences on appeal. *State v. Valencia*, No. 2 CA-CR 2006-0067 (memorandum decision filed Feb. 26, 2007). In this petition for review, Valencia challenges the trial court’s denial of his subsequent petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. Although we accept review, we deny relief.

¶2 In his petition below, Valencia claimed he had received ineffective assistance from his trial counsel based on counsel’s asserted failure to interview witnesses and have DNA¹ evidence independently verified. The trial court summarily denied Valencia’s petition, finding neither deficient performance by counsel nor prejudice. *See Strickland v. Washington*, 466 U.S. 668, 688, 693 (1984) (defendant claiming ineffective assistance of counsel must prove that attorney failed to provide reasonably effective assistance “under prevailing professional norms” and that any deficient performance “actually had an adverse effect on the defense”). “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find none here.

¹Deoxyribonucleic acid.

¶3 Even assuming, arguendo, counsel’s omissions constituted deficient performance, the trial court did not abuse its discretion by finding a lack of prejudice. “Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006). Valencia failed to explain how counsel’s failure to interview the available witnesses negatively affected his defense, and the court specifically noted its memory that “defense counsel was well prepared and effectively cross-examined the witnesses.” Valencia also failed to show that additional DNA testing would have yielded different or more favorable results than those presented at trial.

¶4 To the extent Valencia suggests prejudice should be presumed in this case, we disagree. “[I]f counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable.” *United States v. Cronin*, 466 U.S. 648, 659 (1984). But an “attorney’s failure must be *complete*” in order for prejudice to be presumed. *State v. Glassel*, 211 Ariz. 33, ¶ 63, 116 P.3d 1193, 1211 (2005), quoting *Bell v. Cone*, 535 U.S. 685, 697 (2002) (emphasis in *Glassel*). That was not the case here.

¶5 Nor do we agree that, by denying his request for an evidentiary hearing, the trial court “denied [Valencia] the opportunity to prepare a proper record for this Court to review.” Summary disposition is appropriate when a defendant’s claims present no “material issue of fact or law which would entitle the defendant to relief” and “no purpose would be

served by any further proceedings.” *See* Ariz. R. Crim. P. 32.6(c). Valencia has identified no potential evidence that could have bolstered his claim of prejudice. Accordingly, although we grant review of Valencia’s petition, we deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge